UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

Civil File No. ____________

TRUSTEES OF MINNEAPOLIS RETAIL MEAT CUTTERS AND FOOD HANDLERS PENSION PLAN, and EACH OF THEIR SUCCESSORS,

Plaintiffs,

vs.

COMPLAINT

MILLENNIUM OPERATIONS, INC. and MILLENNIUM OPERATIONS II, INC.,

Defendants.

Plaintiffs, for their Complaint against Defendants Millennium Operations, Inc. and Millennium Operations II, Inc., state and allege as follows:

IDENTITY OF PARTIES, JURISDICTION, VENUE

1. Plaintiffs are Trustees of the Minneapolis Retail Meat Cutters and Food Handlers Pension Plan (the "Plan"). The Plan is a multi-employer, jointly-trusteed fringe benefit plan created and maintained pursuant to Section 302(c)(5) of the Labor Management Relations Act, 29 U.S.C. § 186(c)(5). The Plan is administered in accordance with the provisions of the Employee Retirement Income Security Act ("ERISA"), and is exempt from federal income taxation pursuant to Internal Revenue Code § 401(a).

2. Plaintiffs are Trustees of the Plan and fiduciaries under ERISA § 3(21), 29 U.S.C. § 1002(21).

3. Defendant Millennium Operations, Inc. ("Millennium" or "Defendant") is a Minnesota business corporation with its principal place of business located at 4185 Eau Claire Trail, Prior Lake, MN, 55372. At all times relevant to this litigation, Defendant operated in the retail food and meat industry and employed employees.

4. Defendant Millennium Operations II, Inc. ("Millennium II" or "Defendant") is a Minnesota business corporation with its principal place of business located at 4185 Eau Claire Trail, Prior Lake, MN 55372 and an entity under common control with Defendant Millennium Operations.

5. Defendants are therefore employers within the meaning of Section (3)(5) of ERISA, 29 U.S.C. § 1002(5) and ERISA §4219(c)(5). Defendants, as alleged below, are employers whom have failed to remit withdrawal liability payments pursuant to ERISA §4219(c) and therefore this action is authorized to be brought by a fiduciary of the Fund pursuant to ERISA §4301(a)(1) and (b).

6. This is an action commenced pursuant to ERISA Section 4202, 29 U.S.C. § 1382; ERISA Section 4203, 29 U.S.C. § 1383; ERISA Section 4219, 29 U.S.C. § 1399; ERISA Section 4221(b)(1), 29 U.S.C. § 1401(b)(1); ERISA Section 4301(a), 29 U.S.C. §1451(a); ERISA Section 502, 29 U.S.C. § 1132; and ERISA Section 515, 29 U.S.C. § 1145 to enforce the provisions of ERISA with regard to employer withdrawal liability and to enforce the terms of an employee benefit plan and/or collective bargaining agreement and related statutory provisions, and to collect employer withdrawal liability, liquidated damages, interest, attorney's fees and costs.

7. Jurisdiction in this court is proper pursuant to ERISA Section 4301(c), 29 U.S.C. § 1451(c).

8. The trust for which the Plaintiffs are trustees is administered in Hennepin County, Minnesota; therefore, venue is proper in this court pursuant to ERISA Section 4301(d), 29 U.S.C. §1451(d).

COUNT I
Withdrawal Liability

9. Defendant Millennium Operations agreed to be bound to the terms of a Collective Bargaining Agreement with the United Food and Commercial Workers Union District Local 653 – AFL-CIO (the “CBA”).

10. The CBA required Defendant, among other things, to make benefit contributions to the Plan on behalf of its covered employees.

11. Through recognition and affirmation of the CBA, Defendant also agreed to be bound by and comply with all of the terms of the Agreement and Declaration of Trust establishing the Plan.

12. Defendant is an employer within the meaning of ERISA Section 3(5), 29 U.S.C. § 1002(5).

13. In or around January, 2007, Defendant permanently ceased all covered operations under the Plan. Therefore, pursuant to ERISA Section 4203(a), 29 U.S.C. § 1383(a), Defendant completely withdrew from the Plan.

14. On or about August 19, 2009, the Plan served on Defendant a letter demanding payment for withdrawal liability in the amount of $344,205.00. The demand for payment stated that Defendant’s liability was limited to four annual payments of $80,776.00 each and one additional annual payment of $71,277.00. The payments were to be paid in 19 level quarterly installments of $20,194.00, plus a final installment of $10,695.00. The demand stated that the $20,194.00 quarterly installments were to

begin on October 19, 2009 and be paid on each succeeding December 1st, March 1st, June 1st, and September 1st through March 1, 2014. Payment of the last installment of $10,695.00 is to be paid on June 1, 2014. The payment schedule had been established by the Plan Sponsor and/or its agents.

15. Defendant failed to remit the first installment payment of $20,194.00 due on October 19, 2009. Defendant did not request a review of the demand, nor demand arbitration as to any issues concerning the withdrawal liability demand.

16. On December 18, 2009, the Plan notified Defendant by letter that it had failed to remit the first scheduled installment due and would be in default if it did not to cure its failure within 60 days of receiving the letter.

17. Defendant did not remit payment within 60 days of receiving the Plan's letter of December 18, 2009. To date, Defendant has failed to remit either the first payment of $20,194.00, or any payments which have subsequently become due and owing.

18. Defendant is therefore in default under ERISA Section 4219(c)(5), 29 U.S.C. § 1399(c)(5), and the Plan is entitled to the full amount of outstanding withdrawal liability owed by Defendant.

19. ERISA § 4219(c)(5), 29 U.S.C. §1399(c)(5) provides for an award of any and all interest on the total outstanding withdrawal liability from the due date of the first payment which was not timely made.

20. In accordance with ERISA §4301, 29 U.S.C. § 1451, this action is also treated as an action to collect delinquent contributions. ERISA § 502(g), 29 U.S.C. § 1132(g), which governs the collection of delinquent contributions owed under §515 and

502(a)(3), provides for an award of interest on the unpaid contributions computed at a rate provided in 26 U.S.C. § 6621, and an amount equal to the greater of liquidated damages as provided under the plan or interest on the unpaid contributions. The Plan is therefore entitled to collect accrued interest from October 19, 2009 and liquidated damages in accordance with applicable law.

21. The Agreement and Declaration of Trust under which the Plan is established provides for liquidated damages in the amount of 10% of all unpaid contributions plus all costs and attorneys' fees.

22. Pursuant to ERISA §4301(e), 29 U.S.C. § 1451, the Plan is also entitled to request payment for all or a portion of the attorney's fees and costs expended in this action. The Agreement and Declaration of Trust under which the Plan is established also specifically provides that an employer, such as Defendant, is required to pay all costs of collection incurred by the Plaintiffs, including all attorneys' fees and costs. The Plaintiffs are also entitled to all attorneys' fees and costs incurred in this action under ERISA § 502(g), 29 U.S.C. § 1132(g).

23. Defendant Millennium is liable to Plaintiffs for the employer withdrawal liability owed in the amount of $344,205.00, any and all accrued interest on said liability, liquidated damages and attorney's fees and costs.

COUNT II
Single Employer-Withdrawal Liability-Millennium Operations II

24. Plaintiffs incorporate and re-state the facts and allegations set forth in Paragraphs 1-22 herein.

25. Mr. Frank Worrell, owner of Defendant Millennium Operations and Millennium Operations II exercises "effective control" over both companies and owns a

controlling interest in both companies with fewer than five other individuals. Accordingly, Millennium Operations and Millennium Operations II are entities under "common control" and are a single employer for purposes of withdrawal liability and the claims asserted herein. *See* ERISA § 4001 (b); 26 CFR § 1.414(c)-4.

26. As an entity under "common control" Millennium Operation II was provided the demand for withdrawal liability by virtue of the same being sent to Millennium Operations and is therefore liable for the same amounts as set forth in Count I.

27. Defendant Millennium Operations II is liable for the withdrawal liability owed by Millennium Operations, as an entity under "common control" and therefore a single employer with Defendant Millennium Operations the employer withdrawal liability owed in the amount of $344,205.00, any and all accrued interest on said liability, liquidated damages and attorney's fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment of this Court against Defendant Millennium Operations, Inc. and Defendant Millennium Operations II, Inc., joint and several, for the following:

1. Judgment in the amount of $344,205.00 for withdrawal liability in accordance with ERISA §4219(c)(5);

2. Alternatively, the Plan seeks an entry of judgment for all past due payments as of the date of the Order for Judgment, plus an Order from the Court compelling the Defendant to make all payments in accordance with the schedule set forth in the August 19, 2009 demand served on Defendant;

3. Judgment in the amount of the prejudgment interest owed for amounts accrued on the withdrawal liability owed by Defendants;

4. Judgment in the amount of liquidated damages owed by Defendant;

5. An award of costs, disbursements, and attorneys' fees pursuant to Sections 502(g) and 4301(e) of ERISA, 29 U.S.C. §§ 1132(g) and 1451(e), and the Plan's governing documents; and

6. Such other and future relief as the Court deems proper.

Respectfully submitted,

Date: January 24, 2011.

ANDERSON, HELGEN, DAVIS & NISSEN P.A.

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